**PD-0035-21**

**No. 01-19-00752-CR**



IN THE FIRST COURT OF APPEALS AT HOUSTON, TEXAS

From Trial Cause 13-CCR-168560

In the County Court at Law # 6 of Fort Bend County, Texas

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STATE OF TEXAS

_____V.

JERROD P. ROLAND

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# Appellee's Brief on Merits

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ORAL ARGUMENT REQUESTED

## STATEMENT REGARDING ORAL ARGUMENT

The Appellant believes oral argument would still benefit the Court of Criminal Appeals as it would cover the reasons in policy, stare decisis, statutory interpretation, and history that would explain why this Court should not overturn a century of precedent and expand jurisdiction for politically sensitive trials. All this would the State's Prosecuting Attorney have this Court do in order to preserve a deferred adjudication of a juvenile probation officer who had an altercation with a troubled youth.

## LIST OF PARTIES for recusal

The Appelllee agree with the State's list of Parties.

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Cases



Codes and other sources

Texas CCP, Articles 4.05, 12.02, 12.05, and 12.07.

## STATEMENT OF THE CASE AND THE FACTS

In the interest of brevity a combined statement is offered here..

On July 2, 2013, the Fort Bend County District Attorney's Office presented an information charging official oppression in two counts, alleged to have occurred on or about May 26th, 2013. The case was sent to County Court at Law Number 4 in Fort Bend, then transferred to County Court 5 under Cause 13-CCR-168560. [The case was later transferred to the County Court at Law #6, from which this appeal flows. ]

There was a jurisdictional hearing set for October 20, 2016, but the State passed on that hearing and instead presented it for indictment to a Grand Jury on October 24th, 2016, more than two years AFTER the first filing and the alleged time of the offense. It was assigned to the 268th District Court. Hon. Brady Elliott presiding. RR-Vol I, p. 6-20.

Since the matter was pending before both courts 5 and the 268th District Court, the defense moved for a dismissal of the case in the 268th as being past the statute of limitations. The District Court granted that motion, leaving only the pending matter in the County Court. The County Court's jurisdiction in October of 2019 was also challenged, and the presiding judge determined that he could maintain jurisdiction, denied the defense challenge, and then took a plea for community supervision on the case. RR Vol. I, p. 5-20, 21-24. This appeal followed.

**Reply to the State's Prosecuting Attorney's arguments**

## ARGUMENT AND AUTHORITIES

### Introduction and summary

First, in candor, the Appellee should acknowledge the efforts by Appellant to try and present a fair view on both sides of the argument. This was both gracious and even-handed. However, respectfully, the State's Prosecuting Attorney also treated this problem as an academic exercise in how many types of jurisdictional angel may fit upon the top of a pin. This ignores the very real political and policy problems that over a hundred years of history have shown us. This is not an academic problem; it is one that deeply affects real elections, real public officials, and real citizens. The Appellee will respectfully show how by Fort Bend's own fairly recent history such an outcome as the SPA desires would be a disaster.

The State's prosecuting attorney wishes to "save" the Fort Bend County District Attorney's office from its own inability to follow the law by changing over a century of black letter jurisdictional jurisprudence that was in place for a good reason It fails to acknowledge the potential for forum shopping by political enemies and the potential use of jurisdictional battles to overturn elections and paralyze local governments. It does so most ironically because it ignores Fort Bend's own sordid political history with the very problem it now wants to expand!

The State has lost jurisdiction over this case and the subject matter because of its own actions. It misfiled the case in the wrong forum. In the Court of Appeals it claimed it can rely on tolling because of its incorrect pleadings to save itself from its own mistake and the statute of limitations. The COA ruled directly that there was no jurisdiction on this matter in the decision below. The SPA now wishes to overturn the COA decision because it wants to expand the jurisdiction over official oppression to county courts. This is so even though the county court does not have the power of removal that the District Court has. That is absurd, and it should not be countenanced by this Court. The judgment is void as is the sentence, and it should remain so.

*Applicable law*

An indictment or information for any misdemeanor in Texas must be presented to the proper court within two years of the offense. Article 12.02 of the Texas Code of Criminal Procedure. A case is presented when it is filed in the proper court. Article 12.07, TCCP. See also Article 12.05 for time counting on the limitations, section C. .A District Court has original jurisdiction over all cases of official misconduct. Article 4.05 of the TCCP. Official Oppression is contained with the definition official misconduct as defined under Texas law. See *Emerson v. State*, 727 S.W.2d 267, 268-269 (Tex. Crim. App. 1987)

*Facts*

As relied upon above and in the State's brief and the Appellee's brief below.

*Analysis*

Jurisdiction is a fundamental prerequisite for a criminal judgment and may be raised at any time. In this case, the County Court 6 judgment is void as it was neither a proper court nor did any filings in it or its sister courts toll the statute of limitations. Thus the State fails in its effort to drag out an eight year misdemeanor prosecution against a citizen.

There are a multitude of reasons why the jurisdiction and statute of limitations matter to the citizenry of a free state. The jurisdiction demarcation lends itself to clear lines of separation of authority and prevents forum shopping, while the limitations provide for persons not needing to fear an ancient prosecution against which they cannot defend themselves. [Likewise, there is an important public policy issue with the crimes of official oppression that this Court should note – in a time of hyper partisanship such limitations prevent political entities from trying to reach back through the mists of time to settle old political scores in the courts.] In the case below the Appellee relied upon the plain language of 4.05, the decision in *Nix*, as cited here, see *Nix v. State*, 69 S.W.3d 664, 667-668 (Tex. Crim. App. 2001). The Appellee stands by this reasoning, but also wishes to point out to the Court what he perceives to be flaws in the SPA's reasoning, providing the CCA with a pointed counter to the questions the SPA ponders. First, as the SPA itself points out, there is no harm from

continuing to follow the law as it is, i.e. that no jurisdiction exists in the county courts for official misconduct or oppression. See CCP 4.05. Why are we fixing something that is not broke?

Yet, second, there is perhaps an object lesson in Fort Bend's own not too distant history. In 1992 the elected District Attorney, Jack Stern, was convicted of official misconduct and removed by petition in the 268th District Court, and John Healey was later made DA. See *Stern v. State ex rel. Ansel,* 869 SW 2d 614 (Tex: Court of Appeals [14th] 1994). The background of this case is an instructional manual in the possibility of personal enmity and public officials in county government going awry. From Note 1 of the decision:

1. The background facts of this case are intriguing. Stern warrants as fact that Sheriff Hillegeist and a deputy, Paul Gutheinz, were entangled in a love triangle with a topless dancer by the name of Lori Pyka. Mrs. Pyka was under investigation for arson, and was allegedly using sexual favors to frustrate investigation of this crime. As a result of this investigation, Sheriff Hillegeist, Deputy Gutheinz, Mrs. Pyka, and Captain Ken Lee met briefly at the side of Crabb River Road, allegedly to reassure Gutheinz that his job was not in jeopardy because of his affair with Mrs. Pyka. Seven days later, Sheriff Hillegeist was called before the grand jury and interrogated. He was repeatedly asked whether he had had any meetings with Deputy Gutheinz the previous week. The sheriff said he could recall none.

The grand jury refused to indict Sheriff Hillegeist. District Attorney Stern then publicly released the testimony of Sheriff Hillegeist, Deputy Gutheinz, and Captain Lee in the manner related above. In this testimony, both Gutheinz and Lee admit the meeting took place, clearly contradicting Sheriff Hillegeist's statements. Two of the grand jurors later testified, however, that the Sheriff was never asked specifically about the meeting at Crabb River road, and that they did not think he lied to the grand jury.

District Attorney Stern subsequently subpoenaed Mrs. Pyka to appear before the grand jury on four separate occasions. Before each occasion, Mrs. Pyka's attorney advised Stern that she would plead the Fifth Amendment. Nevertheless, at one session

Stern pursued, or permitted his assistant to pursue, such exotic topics as whether Mrs. Pyka had participated in a menage-a-trois, had she stripped naked at a restaurant, was she known as a "psycho," who was the father of her child, what is the Fifth Amendment, what are the first four amendments, and what does "incriminate" mean. He did not divulge this testimony.

Later the DA Stern, in a fit of pique, released the embarrassing and secret GJ testimony in clear violation of the law. The petition was filed, the charges brought, Stern was tried, convicted, and removed. Whether or not his replacement by Healey at the discretion of the presiding judge Brady Elliott was a good or bad thing for the residents of Fort Bend County should best be left to history. What is clear is that this case removed an elected official, embarrassed several others publicly, harmed one private citizen enormously, and installed an unelected DA for two years until Healy won the next election. This was done in a district court because that is where the power of petition lies. What if this had been, as the SPA wishes, brought in any county court?

Well, to begin with, most county courts are unfamiliar with GJ law and practice. Next, no power of removal exists in county court, so one would be left with this -–should a petition for removal be filed after the conviction? Would the district court handling that have had first-hand knowledge of the misconduct so as to enable it to grant or deny the petition? Would the elected but convicted DA be permitted to stand for re-election? We do not know the answers to these questions. If the State has its way, we will have to find out.

CONCLUSION

CCP 4.05 means what it says. *Nix*, id., means what it says. *Campos v. State*, relied upon so heavily by the SPA, was an errant panel which got it wrong. Notice it has been followed by ….well, no one. Ever. See *Campos v. State*, 783 S.W.2d 7 (Court of Appeals [14th] 1989)

In times of hyper-partisanship, why would the Courts permit themselves to be used as vehicles for settling old political scores that should have been forgotten long ago? While some cases of official misconduct involve lower level public servants, others do not. Why encourage this type of score settling and forum shopping?

Mr. Roland has endured the specter of this prosecution for eight years. Let him go. Let the rest of us go back to practicing law in the real world, where jurisdiction has real consequences, and should not be expanded as an academic exercise in order to see what might happen.

PRAYER

The Appellant respectfully prays that this Court dismiss the petition as improvidently granted, or deny it and uphold the lower court's decision.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was delivered to the opposing counsel for the State in electronic format at their email addresses listed in their pleadings on this day.

Counsel, ___Patrick F. McCann____

CERTIFICATE OF COMPLIANCE

In accordance with the Texas Rules of Appellate Procedure, I hereby certify that this document was prepared in MS Word in a font of 12 or great and that the total number of pages is less than the maximum permitted with a word count of 1900 words.

Counsel, ____Patrick F. McCann_____

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